PUBLICATION OF CLASSIFICATION CATALOGUE OF TELECOMMUNICATIONS SERVICES 2015

The newly-published Classification Catalogue of Telecommunications Services (2015 Edition) (“2015 Catalogue”) may bring about the most profound and extensive changes to the telecom licensing regime in recent years and will affect every telecom operator that has entered or aspires to enter the Chinese telecom market.


Background
Under the Regulations of Telecommunications, telecom services in China are classified into licensing categories as set out in the Classification Catalogue of Telecommunications Services (“Catalogue”). This means each category of telecom services contained in the Catalogue would require issuance of a license by the MIIT, which is also empowered to publish, amend and adjust the Catalogue. The first Catalogue was published in September 2000 and was subsequently amended in 2001 and 2003 respectively. In May 2013, the MIIT published a draft Catalogue seeking public opinions, heralding a formal amendment soon after.

The changes made to the Catalogue in the 2015 version are extensive, and we highlight below some significant changes to value-added telecom services (VATS).
Highlighted Changes Introduced by the 2015 Catalogue

- **New Categories to Catch Cloud Computing**
  The internet database centre (IDC) service has been expanded to include a new type of service named “internet-based resources collaboration service”, which includes internet-based data storage, application development, application deployment and operation management. This newly-included category, together with the broadened information service category and the existing IDC category, are designed to catch cloud computing services in a variety of forms, in particular the IaaS and PaaS services.

- **Extensively-Expanded Scope of Information Services**
  The category of information services has now been extensively expanded to contain five major types of services, namely information publishing and distribution, information search, information community platform, information real-time exchange, and information protection and processing services. This augmented definition now covers a wide range of technologies and services that have emerged and become prevalent in the past decade, such as social networking service applications and websites, internet-based VOIP/video calls and SaaS-based data protection and processing services.

- **Broadened Scope of Online Data Processing and Transaction Processing Service**
  Definition of the three components of this category, namely transaction processing, electronic data exchange and network/electronic device data processing, appearing in the 2003 Catalogue and the 2013 draft Catalogue have been removed. Presumably this removal will enable the MIIT to be flexible in adapting to the development of technologies by defining in the future which services would fall in this category. This applies particularly to innovative technologies or services that technically would fall outside of the current definition of the three components.

- **Newly-Created Categories for CDN and DNS**
  To reflect the rapid development of technologies employed to facilitate online content delivery, new categories have been introduced for content delivery network (CDN) service and recursive domain name system (DNS).

- **Call Centre Divided into Two Subcategories**
  Call centre service is now divided into two subcategories, namely “domestic call centre” and “offshore call centre”. Defined as call centres with both clients and customers being served located abroad, the subcategory of offshore call centre reflects the pilot scheme currently implemented which allows foreign investors to operate offshore call centres in a selected number of cities. The implication on the other hand may be that “domestic call centres” are still closed to foreign investments.

- **Re-categorization of VATS**
  The MIIT has reorganized certain categories of VATS under Type I and Type II. For instance, online data processing and transaction processing service and domestic multi-party real-time communication service, which were Type I VATS, now become Type II VATS, whereas internet connection service, which was a Type II VATS, is now a Type I VATS. The rationale behind this re-categorisation, as explained by MIIT officials, is that Type I VATS is based on “infrastructure and resources” and Type II VATS is based on “public application platforms”.

**Our Observations**

- **Clear Intention to Regulate New Telecom Services**
  The update of the Catalogue has demonstrated the MIIT's
determination to bring under its regulation the telecom services that have emerged in the past decade. Moreover, the expanded scope of telecom services across the spectrum and the generalized description of certain services also highlight the MIIT’s expectation that new technologies and services emerging in the future should fall into the scope of the 2015 Catalogue.

More Services Subject to Licensing Requirement
A direct impact of the 2015 Catalogue is that telecom service operators who are not currently subject to licensing requirement under the 2003 Catalogue may now have to apply for a license or face consequences of unauthorised operation. Notably, most forms of cloud computing services may now be subject to licensing. Also, the information service category with its expanded scope is likely to cover significantly more telecom services, to which the 2003 Catalogue is not currently applicable. In addition, some operators holding a valid license may need to apply for a license under a different category upon renewal.

Uncertainty as to Approval Policy
The approval on granting the license, especially for foreign investors, has long depended on the internal policy that MIIT dictates behind closed doors. Accordingly, it is difficult to predict what approval practice MIIT will take in relation to the new categories, as well as whether the MIIT will change its approval practice on categories that survive in the 2015 Catalogue, intact or with changes. One category that merits closer observation is the online data processing and transaction processing service, which is the first and only category where the cap on foreign-ownership has been removed. However, since the removal in June 2015, the MIIT has yet to publish its approval procedures for this category. Now given the broadened scope of this category, the approval policy of the MIIT is becoming even less certain.

The re-categorization of VATS under Type I and Type II also begs the question: would the approval policy for Type II VATS be less stringent than those for Type I VATS, considering that VATS under Type II is based less on “infrastructure and resources” and more on “public platforms”?

What to do before the Catalogue Takes Effect
Officials at the MIIT have publically stated that current licenses, and existing scopes, will remain valid for the full term of the licence and that the MIIT will cater for applications made by service operators to alter their current licences. However, no reference has been made to telecom service providers who only become subject to licensing requirement under the 2015 Catalogue and whether they may continue operating their services before obtaining the requisite licence from the MIIT. As such, telecom service operators are encouraged to consult with the MIIT regarding the applicable licensing requirement and their approval policy during the transition period. In the meantime, each operator should re-examine its current business model and projects to ensure that they are not operating in violation of licensing requirements under the 2015 Catalogue.

Back
publication do not constitute an opinion upon Chinese law. We would be happy to coordinate with Chinese counsel if you require a legal opinion on Chinese law.

Herbert Smith Freehills LLP and its affiliated and subsidiary businesses and firms and Herbert Smith Freehills, an Australian Partnership are separate member firms of the international legal practice known as Herbert Smith Freehills.

The contents of this publication, current at the date of publication set out in this document, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills LLP 2016

This message is sent by Herbert Smith Freehills LLP Beijing Representative Office (UK), 28th Floor Office Tower, Beijing Yintai Centre, 2 Jianguomenwai Avenue, Chaoyang District, Beijing 100022, Tel: +86 10 6535 5000, e-mail: asia@hsf.com.

如阁下不希望接收本电子报，请点击此处。